

NWRY



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: DBA Systems, Inc.
File: B-224306
Date: December 31, 1986

DIGEST

1. Protest that agency evaluated proposals too quickly and committed other procedural errors is without merit where the procedures used were not irregular and none of the issues raised relates to the protester's competitive standing or to the validity of the protested award.
2. General Accounting Office sustains a protest where the procuring agency failed to conduct meaningful discussions regarding aspects of the protester's proposal and failed to evaluate fully in accord with stated evaluation factors.
3. Where no other corrective action is possible, successful protester is entitled to recover its proposal preparation costs and the costs of filing and pursuing the protest, including reasonable attorney's fees.

DECISION

DBA Systems, Inc. protests the award of a contract to Vitro Services Corporation under request for proposals (RFP) No. N00421-86-R-0120, issued by the Naval Air Station, Patuxent River, Maryland. DBA contends that the Navy did not evaluate proposals in accord with the factors listed in the solicitation and failed to conduct meaningful discussions concerning deficiencies in DBA's proposal.

We sustain the protest.

The solicitation, issued on March 11, 1986, sought offers to design, produce, and install six "steerable emitter threat simulators," which electrically simulate radar or other radiated signals normally associated with surface-to-air missiles or anti-aircraft artillery for use in combat training. The successful contractor must prepare sites and install the threat simulators at the Navy's Dare County Bombing Range in North Carolina.

The RFP stated that proposals would be evaluated on three factors: technical approach, technical capability, and price. It instructed offerors that technical approach would be 2.5 times as important as technical capability, and that the combined technical factors would be at least twice as important as price. In scoring proposals, the Navy assigned but did not disclose to offerors, a maximum of 500 points to the offeror's technical approach, 200 points to technical capability, and 300 points to price.

Five firms submitted proposals, and, after initial evaluations, the Navy determined that three were in the competitive range. These included Vitro, which has previously supplied similar equipment to the Navy, and DBA. On May 27, the Navy provided offerors with a list of inadequacies in their proposals and requested that best and final offers be submitted by June 18.

The technical evaluation team gave the following scores to the best and final offers of Vitro and DBA:

	<u>Vitro</u>	<u>DBA</u>
Technical Approach		
Equipment/Hardware	251.00	217.25
Equipment Installation	169.25	124.50
Technical Capability (Personnel and Facilities)	171.25	127.50
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	591.50	469.25

The two firms' prices were very close, so the difference in technical scores is reflected in the combined technical and price scores: Vitro received 98.84 points and DBA received 85.54 points.^{1/}

The protester raises several issues regarding the conduct of the procurement that we find without merit. For example, DE

^{1/} The Navy normalized technical scores by assigning Vitro 70 points (the maximum available on a scale of 100), and gave DBA the same percentage of those points as the percentage of its raw score was of Vitro's (55.54 points). The offerors' prices were converted to point scores and normalized in the same manner. DBA was given the maximum score for price (30 points), and Vitro 28.84 points.

questions the fact that the agency did not use a formal source selection plan; completed the initial evaluation in 7 working days and reviewed best and final offers in 2 days; recorded final scores on the initial evaluation scoring sheets; and requested best and final offers in the letter containing discussion questions and comments. We do not find that these procedures are unusual, or that the issues raised relate to DBA's competitive standing in the procurement or to the validity of the agency's selection decision. They do not provide grounds for sustaining DBA's protest. See Professional Analysis, Inc., B-224096, Nov. 18, 1986, 86-2 CPD ¶ 519; Todd Pacific Shipyards Corp., B-214160, Nov. 13, 1984, 84-2 CPD ¶ 519.

On the other hand, as discussed below, we find that the Navy made a number of errors in the evaluation of proposals, and we believe that these improprieties deprived DBA of a fair opportunity to compete for the contract.

MAJOR TECHNICAL CONCERNS OF THE EVALUATION TEAM

By memorandum dated August 4, 1986, the major findings and conclusions of the technical evaluation team were provided to the Procurement Division of the Naval Air Station by the head of the Navy's Chesapeake Test Range Department. The memorandum requested approval to award to Vitro based upon those findings and conclusions and listed the five areas of "most concern" to the evaluation team in their evaluation of DBA's proposal. We find that the Navy failed to conduct meaningful discussions with the protester in two of these areas, and that one of the areas was not actually a concern of the evaluators.

The Competition in Contracting Act of 1984, 10 U.S.C. 2305(b)(4)(A) (Supp. III 1985), requires that written or oral discussions be held with all responsible sources whose proposals are within the competitive range. Such discussions must be meaningful, and, in order for discussions to be meaningful, agencies must point out weaknesses, excesses, or deficiencies in proposals unless doing so would result either in disclosure of one offeror's approach to another or in technical leveling. Price Waterhouse, 65 Comp. Gen. 205 (1986), 86-1 CPD ¶ 54, aff'd on reconsideration, B-220049.2, Apr. 7, 1986, 86-1 CPD ¶ 333. Once discussions are opened with an offeror, the agency must point out all deficiencies in that offeror's proposal and not merely selected ones. Id.

Simultaneous Transmission

One of the major concerns cited, a failure to describe how two transmitters were to use a single antenna, was not

discovered until after completion of the technical evaluation. In an affidavit submitted to our Office, the leader of the evaluation team states that he discovered this "potential problem" while preparing source recommendation documents following the final evaluation. The evaluation panel assumed that DBA had incorporated a simultaneous transmitter capability in its proposal and had given the firm credit for the capability in scoring the proposal.

The Navy does not argue that it had no obligation to discuss with DBA the informational weakness concerning simultaneous transmission once discovered. Instead, the agency contends that no prejudice resulted from its failure to do so because award was based upon DBA's relative score, which included full points for a simultaneous transmission capability. While total scores were a major consideration, the record reflects that the informational weakness was also a consideration--as discussed above, it was listed as a "major concern" in the award justification--and we cannot conclude that DBA was not prejudiced by this failure to conduct meaningful discussions.

Pedestal Leveling

During discussions, the Navy asked DBA how it would level the radar pedestals. The August 4 award recommendation and justification memorandum states that DBA's method of leveling the pedestals was a major concern of the evaluation team because it was not considered the best method in light of the particular mounting platform and the need for pedestal re-leveling. The record establishes that, in fact, the evaluation team did not consider DBA's method to be a weakness. Three out of four team members gave DBA the maximum points available, noting that the information provided by the firm about pedestal leveling was satisfactory. One member thought that DBA's method was not the best, and he subtracted one point. Since the team members' scores were averaged, DBA's pedestal leveling method caused it to lose one-fourth of a point out of 500 available points for technical approach. Clearly, the account of the evaluation team's concern about DBA's pedestal leveling method in the award recommendation and justification was incorrect.

"Pressure/Dehydrator"

Another area cited as a major concern was the absence of information about the environmental operating conditions of

the "pressure/dehydrator" component of DBA's system. The protester contends that it was given no indication during discussions that the Navy considered its proposal weak in this area. The record of the initial evaluation of DBA's proposal shows that the evaluation team desired more information on this component, and the Navy told DBA that "amplification is required on the proposed pressure/dehydrator." DBA responded with a complete description of the unit, including schematic diagrams and drawings.

The record of the evaluation of DBA's best and final offer reflects the Navy's recognition that DBA had provided an in-depth description of the pressure/dehydrator and its operation. However, in reviewing DBA's best and final offer, the evaluation team believed it contained insufficient information about reliability and maintainability under environmental conditions of the planned use, a specific concern not reflected in either the record of the initial evaluation or in questions presented to DBA. The Navy subtracted 10 points under the "maintenance features" subfactor and 6.25 points under "local/remote control features" because of this concern.

We agree with DBA that the Navy failed to conduct meaningful discussions by not questioning the firm about reliability under expected operating conditions for the pressure/dehydrator. DBA could have increased its score by 16.25 points if it had been asked for and had provided the desired information.

CONFORMITY WITH STATED EVALUATION FACTORS

DBA contends that the Navy failed to follow the stated evaluation factors with respect to two technical approach subfactors. The RFP stated that the technical approach factor included the offer's approach to satisfying current requirements and potential growth, and that improvements or enhancements in two "critical areas" would be given the "highest degree of importance." The RFP then described in detail the two critical areas: improved tracking accuracies and flexible operating characteristics. The protester argues that it relied upon the Navy's representation about the significance of the two subfactors in preparing its proposal. In evaluating proposals, however, the Navy assigned these so-called critical areas only 18 and 42 points, respectively, for a total of 60 out of 500 possible points for technical approach. DBA received 8.25 points more than Vitro. We agree with the protester that the Navy failed to assign as much importance to the two subfactors as the solicitation indicated, and that, had the evaluation been performed properly, DBA's score would have been higher relative to Vitro's.

DBA also questions the Navy's evaluation of personnel and facilities. While not singled out as a major weakness, the evaluation team was concerned that DBA's subcontractor for a transmitter subsystem would, in turn, subcontract for manufacturing. The Navy was also concerned that several of the subcontractor's design staff would be consultants employed for the project, rather than full-time employees. According to DBA's proposal, which includes copies of the executed consulting agreements, three out of seven of the design firm's staff would be in this category. Evaluators viewed these aspects of DBA's proposal as increasing possible difficulties in resolving any post-installation problems or obtaining logistical support, and they deducted 21.25 out of a possible 50 points for DBA's "adequacy of facilities" and 5 out of a possible 10 points for "personnel expertise" in the transmitter area. DBA argues that the RFP did not indicate that offerors would be penalized for using subcontractors or consultants, and that a preaward survey of the firms in question was entirely satisfactory.

An agency may consider the capabilities of subcontractors as well as whether subcontracting itself might detract from the contractor's performance. See Rolen-Rolen-Roberts International et al., B-218424 et al., Aug. 1, 1985, 85-2 CPD ¶ 113. In this case, however, a preaward survey of the transmitter design and manufacturing firms found their production, quality assurance, and financial capabilities satisfactory, and the Navy has not suggested why use of the two firms presents any risk to proper design, production, and installation of threat simulators. The Navy's concern--obtaining post-installation and logistical support--is not related to any obligation of the contractor. The contractor must provide spare parts and plans for maintaining the threat simulators, but will have no express obligation after the system is accepted. We do not believe that prospective offerors were reasonably apprised that subcontracting or use of consultants would be important elements of the evaluation. Consequently, in our view, the Navy's deduction of almost half of the points available for DBA's "adequacy of facilities" because of plans for subcontracting some of the work was unreasonable. Deduction of half of the points available for transmitter "personnel expertise" because some consultants would be employed is similarly inconsistent with the stated evaluation factors.

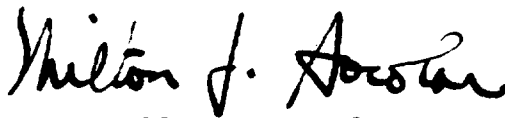
As noted above, DBA's technical score was 122.25 points less than Vitro's and its price, while lower, was very close to the awardee's. We cannot say conclusively that, absent the errors in its evaluation, the Navy would have selected DBA. We believe, however, that so many major errors were made that

the protester was deprived of a reasonable chance of receiving an award.

Generally, where discussions are inadequate and evaluation criteria have been misapplied, the appropriate remedy is to reopen discussions and to reevaluate best and final offers. This is not practical here since DBA filed its protest more than 10 days after award, and the Navy made a determination as permitted under the FAR to continue contract performance during the pendency of the protest. See 4 C.F.R. § 21.6(b); E.H. Pechan & Associates, Inc., B-221058, Mar. 20, 1986, 86-1 CPD ¶ 278.

As no other corrective action is appropriate, we find that the protester may be allowed the recovery of its proposal preparation costs. See Nicolet Biomedical Instruments, 65 Comp. Gen. 145 (1985), 85-2 CPD ¶ 700. We also find that DBA should be allowed to recover the costs of filing and pursuing the protest, including any reasonable attorney's fees incurred, since, given the circumstances of this case, we have not recommended an award to DBA. 4 C.F.R. § 21.6(e). Accordingly, by separate letter, we are advising the Secretary of the Navy of our determination. DBA should submit its claims for such costs directly to the agency. 4 C.F.R. § 21.6(f).

The protest is sustained.


for Comptroller General
of the United States